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preferred creditors had been receiving no interest they were entitled to interest from time of dissolution to time of settlement, in order of preference, although other creditors were thereby entirely cut off. See also *Upton v. Bank*, 13 Hun. 269.

DAMAGES—TELEGRAM—FAILURE TO DELIVER.—*BUTLER v. WESTERN UNION TELEGRAPH CO.*, 40 S. E. Rep. 162 (S. C.).—This is an action brought against the defendant for failure to deliver a telegram sent to a third person for plaintiff's benefit. *Held*, where a telegraph company failed to deliver a telegram sent by the son of plaintiff to a third person for benefit of plaintiff, the latter has a right of action.

Where an agent without disclosing the name of his principal makes a contract with a common carrier to transport the property of principal, the latter may maintain an action in his own name against the carrier to recover damages for the loss of the property. *Elkins v. Boston & Maine R. R. Co.*, 19 N. H. 337.

DIVORCE—JURISDICTION—DOMICILE OF DEFENDANT.—*WALLACE v. WALLACE*, 50 ATL. REP. 788 (N. J.).—Complainant, deserted in one State moving into another State for the purpose of securing a divorce in such State, acquired no domicile sufficient to give the courts of such State jurisdiction, when no service is had on the defendant in such State.

This point was not decided in the recent Supreme Court decisions on this subject, 181 U. S. 155-187, although the decision is a natural sequence of those cases. The difficulty arises as to when, under such circumstances as above stated, the domicile relied upon is matrimonial. This case lays down the rule that "necessity" alone is the true ground for jurisdiction in such cases, as suggested in *Bree v. Bree*, 181 U. S. 175, and *Atherton v. Atherton*, 181 U. S. 155. Many western jurisdictions have, of course, taken the opposite view, but this seems to present a just solution of the jurisdiction problem in such cases.

ELECTION OF OFFICERS—CITY COUNCIL—QUORUM—REFUSAL TO VOTE.—*SCHMULBACH ET AL. v. SPEIDEL ET AL.*, 40 S. E. REP. 424 (W. VA.).—The defendants had been elected as members of the board of public works, and had taken forcible possession of the office and books. The plaintiffs, alleging illegality of election, petitioned the court to compel defendants to restore the office and books to them. *Held*, that a quorum of the city council being secured, though by unlawful means, and a majority of those present voting for the persons elected, the election is valid.

Although a quorum was obtained by the aid of the police, yet the session was a legal one, and its acts were valid. The right to compel attendance of absent members is the recognized power of every lawfully organized legislative assembly. *Cush. Law & Prac. Leg. Assem.* 3264.

EQUITY—MORTGAGE FORECLOSURE—SALE TO EXECUTOR AS MORTGAGEE.—*FLEMING v. MCCUTCHEON*, 88 N. W. 433 (MINN.).—Defendant, owner of a real estate mortgage, was appointed administrator of estate of mortgagor. While administrator he foreclosed the mortgage, purchased the property at the sale, and subsequently sold same at a profit. Action by the heirs-at-law to recover this profit. *Held*, that the administrator had a legal and equitable right to foreclose and purchase, and was not liable for the profits in the transaction. *Brown, J., dissenting.*

This case seems somewhat at variance with the general equitable rule that one standing in a fiduciary relation purchasing at his own sale will be charged as constructive trustee at election of cestui que trust. *Yost v. Crombie*, 8 U. C. C. P.